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Ontario. Consolidated Hearings Act, 1981.

CH-89-09

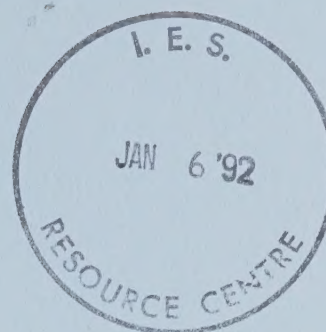
DECISION AND REASONS FOR DECISION IN THE MATTER OF TWO
APPEALS, BOTH BY LEONARD AND RUTH LEGROS. 1991.

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Ontario



The Joint Board THE CONSOLIDATED HEARINGS ACT, 1981

CH-89-09

DECISION AND REASONS FOR DECISION

IN THE MATTER OF two appeals, both by **Leonard and Ruth Legros**. The first appeal results from a decision of the Niagara Land Division Committee which refused their application for consent to sever 0.4 ha (1.01 acres) of land. The second appeal results from a decision of the Niagara Escarpment Commission which refused their application for a development permit to construct a two-storey, single family dwelling, with accessway and septic system.

BEFORE: T.F. Baines, Q.C. - Chairman
Dr. K. Davies - Member

DATED at **TORONTO** this 20th day of **DECEMBER, 1991**

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IN THE MATTER OF Sections 2 and 3 of the *Consolidated Hearings Act*, S.O. 1981, as amended

AND IN THE MATTER OF Sections 22(1) and 52(7) of the *Planning Act*, S.O. 1983, as amended;

AND IN THE MATTER OF Section 25 of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1980;

AND IN THE MATTER OF two appeals, both by **Leonard and Ruth Legros**. The first appeal results from a decision of the Niagara Land Division Committee which refused their application for consent to sever 0.4 ha (1.01 acres) of land. The second appeal results from a decision of the Niagara Escarpment Commission which refused their application for a development permit to construct a two-storey, single family dwelling, with accessway and septic system.

BEFORE: T.F. Baines, Q.C. - Chairman
Dr. K. Davies - Member

COUNSEL:

T. A. Richardson
and Leila Khan - for Mr. and Mrs. Legros

Alison M. Hall - for the Niagara Escarpment
Commission

APPEARANCES:

Thomas W. Smart - Senior Planner, Miller O'Dell

Clarence P. Riepma - Planner, Town of Niagara-on-the-Lake

Patrick Robson - Planner, Niagara Escarpment Commission

DECISION AND REASONS FOR DECISION

In this Joint Board hearing, Leonard and Ruth Legros seek to divide their lot (Part Lot 93 in the Town of Niagara-on-the-Lake) approximately in half (i.e., 1.01 acres for consent and 1.22 acres to be retained), so that Mr. Legros' brother and his wife may construct a residence thereon. The existing Legros home would remain on the retained lot. The Legroses live in the former village of St. David's now in the Town of Niagara-on-the-Lake, on the west side of Tanbark Road, immediately north of the four lane controlled access provincial Highway No. 405.

The main issue in the hearing was whether the subject lot is located within a minor urban centre. This land use designation is used in the Niagara Escarpment Plan to identify those rural settlements, villages and hamlets that are distributed throughout the Plan area. The boundaries of the St. David's "minor urban centre" were the main subject of dispute because more permissive conditions apply to development within the minor urban centre than to development outside it. Both the Niagara Region and Niagara Escarpment graphic plans indicate, by means of relatively small circles located at what appear to be the main intersections of St. David's and Queenston, respectively, that such minor urban centres as Queenston and St. David's are recognized by a symbol and need not have the Official Plan of the Region of Niagara amended to change the designation. [see Niagara Plan Section 1.6(4)]

The technically still valid Niagara Township Official Plan of about 1970, Exhibit 1A at page 8, and the new updated Official Plan approved at the local level and presently before the Minister of Municipal Affairs for approval, both show a boundary outline for St. David's that includes the subject lot.

The Niagara Escarpment Commission (NEC) points out that:

1. It is seeking to have the St. David's boundary altered to one depicted at Exhibit 10 in these proceedings in its submission on the Niagara-on-the-Lake (NOTL) Plan to the Minister. This would encompass no more than one-quarter or one-fifth of what the Town shows for St. David's, all in an area centred by Old Creek Road (Regional Road 100) and old Highway No. 8 (Regional Road 81);
2. The Escarpment Protection and Escarpment Rural policies of the Niagara Escarpment Plan, now blended with the Regional Plan, contain sections whereby

no urban plan is recognized that is in conflict with the Niagara Escarpment Plan. Here, the proposal is on lands which the NEC have designated as Protection and this designation directs developments toward an area within the urban centre "with the least possible environmental and agricultural disruption". This, in effect, directs it from an Escarpment Protection designation to an Escarpment Rural designation. Sections 1.6(3) and (4) of the Niagara Escarpment portion of the Plan are relevant here.

1.6

Minor Urban Centre

Objectives

3. To generally direct the growth of villages, hamlets and settlement areas away from Escarpment Natural Areas and Escarpment Protection Areas into Escarpment Rural Areas in a logical manner with the least possible environmental and agricultural disruption.
4. To ensure that any growth will be in accordance with a municipal official plan and/or secondary plan which is not in conflict with the Niagara Escarpment Plan.

The NEC takes the position that because the proposal is located in a protection designated area in the NEC Plan, the proposed use of "Rural Residential" does not comply with the criteria for lot creation in that area. That is conceded by the applicants/appellants but the saving and very explicit clause immediately following 1.6(4) as set out above is:

Criterion for Designation

The Minor Urban Centre designation includes the following list of villages and hamlets which are designated in local, regional or county official plans."

It includes a list of small centres within the area of the Niagara Escarpment Plan, including St. David's. The Plan states that changes to the list and to designations do not require amendments to the Niagara Escarpment Plan.

The proposed lot fronts on a Town maintained road, and piped municipal water service extends to the end of Tanbark Road. There is a continuous and rather dense line of deciduous shrubs and trees between this lot and Highway 405 to the south which prevents

it being viewed by those on the eastbound lanes of that highway except at a great distance to the west. There is some nominal agricultural activity to the west and across the road to the east, neither of which would be affected by this proposal. The lot itself is vacant with no use.

Between the location of this proposed lot and the intersection of Tanbark Road with Warner Road, a distance of approximately 2,500 feet, there are already 20 or more separated lots with houses and other buildings thereon. The lot itself is within the St. David's community boundaries as depicted in the Niagara Township Official Plan which still applies. It is also within the boundaries of the newly proposed Official Plan for NOTL which is presently before the Minister and subject to challenge by the NEC, which is proposing a smaller and more narrowly defined area for St. David's. The NEC proposed boundary would also exclude at least 84 other properties with houses thereon and a large trailer park. The Board envisions a rather serious dispute on the issue of precisely where the boundary will be located. It does not seem necessary that this Board attempt to resolve this issue. It remains only to determine that:

1. St. David's is a "minor urban centre" so designated in the combined Regional/NEC Plan and that residential development is permitted within such a "minor urban centre" designation;
2. The precise boundaries are in dispute at the present time; and this issue will not be resolved by this Board;
3. This lot is within the boundaries of the old Township of Niagara Official Plan which still applies at the NOTL level;
4. The old Township of Niagara Official Plan may well be in conflict with the NEC proposed revised urban boundary for St. David's, but given that the resolution of this entire conflict is not before this Board, is it proper to make a decision to resolve it for only the subject lot.

In addition to the foregoing, the Board was advised that none of the normal commenting agencies were opposed, including the Region of Niagara, whose Official Plan has gone through a conformity exercise with the NEC and its Plan. The Region of Niagara also concluded no change was necessary to its Plan for this appeal. Obviously, the Town supports the changes requested as it has taken the necessary action by way of Official Plan

amendment. The Town (NOTL) did not act upon the site specific Official Plan request so the applicant requested referral by the Minister in order that this Joint Board could consider that matter together with the consent and development permit.

The lot is located at the end of a row of more than 20 residential lots, some of which are several acres in size. It abuts Highway 405 which acts as a major obstacle as well as a protective buffer from Niagara Escarpment Protection area. The rest of the houses in the subject strip are already zoned Suburban Residential. The Legros parcel is the only one designated as Rural.

The Board could, as the Land Division Committee apparently did (which also probably recognized that the conflict over boundary location was in process but not yet resolved, deny this application as being premature. But what would be achieved?

The creation of one lot would be prevented on one small parcel of land at the end of a road abutting Highway 405, with no overall access to the Escarpment. The proposed house could only be seen directly from Tanbark Road. Being a dead end and with no visual access to the Escarpment, Tanbark has no casual traffic by sightseers seeking to view the attractive vistas of the Escarpment and the area around it.

In more practical terms of appropriate planning, this Board can see no adverse impacts. It was also the opinion of the Town consultant planner, Mr. Riepma, and Mr. Smart, the applicants' consultant planner, that there are none.

The evidence of the NEC planner, Mr. Robson, focused on two issues:

1. Whether the Niagara Township Official Plan was in conflict with the Niagara Escarpment Plan and/or the new draft Official Plan of NOTL. If so, it was his view that the Niagara Escarpment Plan is the senior Plan in accordance with the Niagara Escarpment Planning and Development Act and therefore should prevail.
2. Second, he pointed out that the NEC has proposed to relocate the boundaries of St. David's so that all the lands under development control but perceived by the NEC as properly within a minor urban centre designated as Rural and the rest of the lands otherwise in St. David's to the west, south and east, designated as Escarpment Protection. If that is so, then the policies of the Niagara Regional and Escarpment Plan direct that development should be directed "away from

Escarpment Protection into Escarpment Rural in a logical manner with the least possible environmental and agricultural disruption". The NEC's own planner at page 284 of the transcript acknowledges the status of the planning location of the subject lands. At line 13,

You cannot be in the minor urban centre at this point, because it is in the Escarpment protection area, because right now there is a conflict, and the conflict has yet to be resolved. So all I'm saying is that presently the application is premature at best.

Counsel for the Commission acknowledged that "I mean, we can't jump the gun either, but the Commission's position is that it should remain outside of the boundaries, but that is still open to negotiation obviously". (trans: vol. 2, p.323)

From all of the foregoing the Board concludes:

1. By traditional planning criteria the application has little or no adverse impacts on its surroundings and it is capable of hook-up to a municipal service (water). It is adjacent to Highway 405 which prevents further development to the south.
2. The Region and NEC Joint Plans state that St. David's is a minor urban centre so designated for a series of reasons to avoid development in other more sensitive areas.
3. That development can take place within such locations provided it is so designated in a municipal Official Plan or Secondary Plan that is not in conflict with the Niagara Escarpment Plan.
4. The Town of NOTL and the NEC have different versions of the location of the boundary of St. David's and that the precise location of the boundary is still open to negotiation.
5. The only Plan on which the Board can rely is the Township of Niagara Official Plan which still applies and includes the subject lands. The designation of the subject lands under that Plan is Rural whereas the lands adjacent to it where development exists is Suburban Residential. The request for the Official Plan amendment herein is to change from Rural to Suburban Residential in conformity with the other lots on Tanbark Road to the north.

6. The reference in the Region/NEC combined Plan to "in accordance with a municipal Official Plan and/or Secondary Plan which is not in conflict with the Niagara Escarpment Plan" refers to the Township of Niagara Official Plan.
7. In the Board's judgment, it is unreasonable that a landowner should be denied consents because of the argument of prematurity if that argument is based on a delay in resolution of planning principles and area delineations.
8. These applicants have been inching their way through the process of getting a consent to sever since March 1988, without getting an answer other than denial on grounds of prematurity. But even the prematurity argument is capable of more than one interpretation.

Confining this application to:

1. frontage on a maintained road;
2. availability of piped municipal water;
3. well-screened from surrounding uses;
4. last lot possible in the development on the west side of Tanbark Road;
5. no significant, adverse impacts on surrounding uses;
6. general compliance with the requirements of Section 50(4) of the Planning Act except for the Official Plan issues which are unresolved;

The Board sees very little to say against this application.

On the other issue of inclusion within the "minor urban centre" of St. David's, given that there is still an admitted unresolved issue as to its boundary with the Town on one side and the Commission on the other, the Board, will rely on the only Official Plan about which there is no dispute, namely the Township of Niagara Plan.

On that basis, the Board finds in the Legroses' favour on all matters. An amendment to the former Township Plan, now Town of NOTL, as in Appendix "A" hereto is approved.

The consent to convey the 1.01 acre lot on the west side of Tanbark Road, Part 1 on a survey dated June 28, 1988 by Andrew Cameron filed in the applicants' consent application is given and the consent shall issue in accordance with Section 52(18) of the Planning Act.

A development permit for construction of a home on the building envelope within the subject lot is hereby directed to be issued.

As to the consent, it shall not issue until those conditions listed at Appendix "B" to this decision are fulfilled. As to the development permit, it shall not issue until those conditions listed in Appendix "C" to this decision are fulfilled.

Should any of the conditions of approval herein not be in accordance with the understanding of the parties, the Board may be spoken to.

The Board so orders.

DATED at TORONTO this 20th day of DECEMBER, 1991

"T.F. Baines"

T. F. Baines, Q.C.
Chairman

"K. Davies"

Dr. K. Davies
Member

LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Filed By</u>
1a	Evidence Book	Richardson
1b	Official Plan Amendment	Richardson
1c	Consent Application	Richardson
2	Photo panel with Identifying Direction	Richardson
3	Aerial photo April 1989	Richardson
4	Assessment Map of Area	Richardson
5	NEC Plan Map No. 1	Richardson
6	Map of Development Control in the Area	Hall
7	Resume of Mr. Clarence Riepma	Richardson
8	Resume of Patrick Robson	Hall
9	Niagara Escarpment Plan January 1991	Hall
10	Revised Urban Boundary Map (St. David's) Approved by the NEC	Hall
11	Map 2 NEC Plan	Richardson

PART A - THE PREAMBLE

The Preamble does not constitute part of this amendment.

Purpose

The purpose of the application is to amend Schedule 'D' of the Official Plan for the former Township of Niagara Planning Area to redesignate land within the St. David's Urban Community Boundary from "Rural" to "Suburban Residential", as shown on the attached Schedule. This redesignation of lands will allow for the creation of a new lot to be used for residential purposes.

Location

The land affected by this amendment is located north of Kings Highway No. 405 and on the west side of Tanbark Road being part of Township Lot 93 parts 1 and 2 in the Town of Niagara-on-the-Lake as shown on the attached Schedule.

The Basis

The lands affected by this Amendment are currently designated as part of the St. David's Urban Community Boundary with a 'Rural' designation. The subject lands are adjacent to Suburban Residential Development and is the only property along the west side of Tanbark Road not so designated "Suburban Residential".

The Council of the Town of Niagara-on-the-Lake in December of 1989 adopted a new Official Plan which designated the property subject of this amendment "Low Density Residential" within the boundary of the St. David's Urban Community. That Plan is presently before the Minister of Municipal Affairs and Housing for approval. The owner of the property has a current application before the Consolidated Hearings Board for:

1. an appeal on an application to the Niagara Land Development Committee to sever a 0.41 hectare (1.01 acre) vacant lot for residential use, and to retain a 0.49 hectare (1.22 acre) parcel for continued residential use;
2. an appeal against a decision of the Niagara Escarpment Commission on an application to allow the construction of a dwelling on the lot to be conveyed.

In order to allow the Consolidated Hearings Board to have all issues before it, the proposed application is being made to amend the existing Official Plan in accordance with the policies already adopted by Council in the New Official Plan Document.

Proposed Land Use

The proposed land use for the property within the Amendment is 'Suburban Residential' to allow for the creation of a new lot for residential purposes.

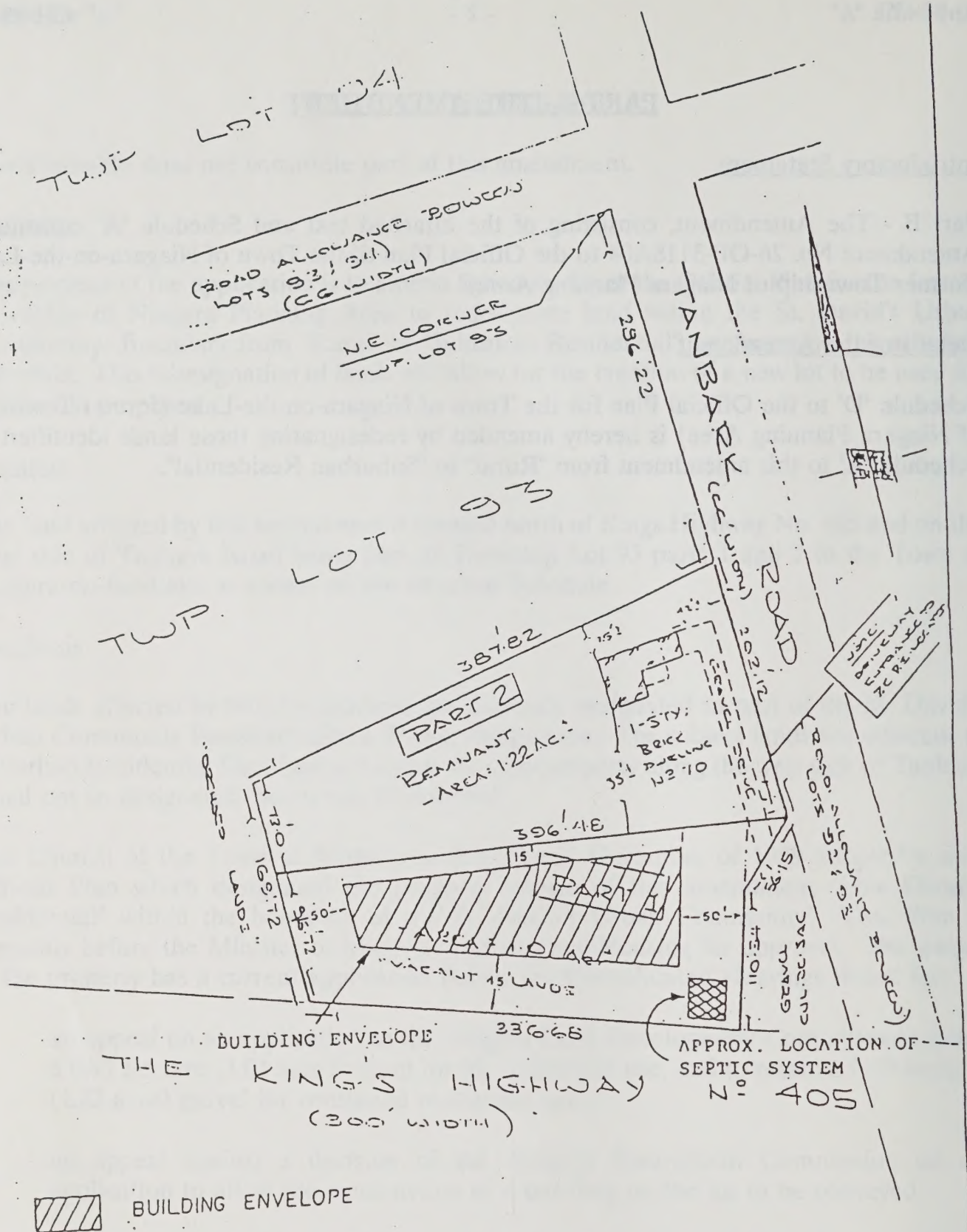
PART B - THE AMENDMENT

Introductory Statement

Part B - The Amendment, consisting of the attached text and Schedule 'A' constitutes Amendment No. 26-OP-3118A04 to the Official Plan of the Town of Niagara-on-the-Lake (former Township of Niagara Planning Area).

Details of the Amendment

Schedule 'D' to the Official Plan for the Town of Niagara-on-the-Lake (former Township of Niagara Planning Area) is hereby amended by redesignating those lands identified on Schedule 'A' to this amendment from "Rural" to "Suburban Residential".



DATE JAN 26 1988

ANDREW CAMERON
ONTARIO LAND SURVEYOR

MATTHEWS & CAMERON LTD.
 PROFESSIONAL ENGINEERS
 27 WILLIAM STREET
 ST. CATHARINES ONT.
 PHONE (416) 602-1364 L2H 5110

PLAN FOR LAND DIVISION PURPOSES ONLY

PART OF TWP. LOT 93

TOWNSHIP OF NIAGARA

NOW IN THE
TOWN OF NIAGARA-ON-THE-LAKE

REGIONAL MUNICIPALITY OF NIAGARA

DRAWN

A.C.

CHECKED

A.C.

SCALE

1" = 100'

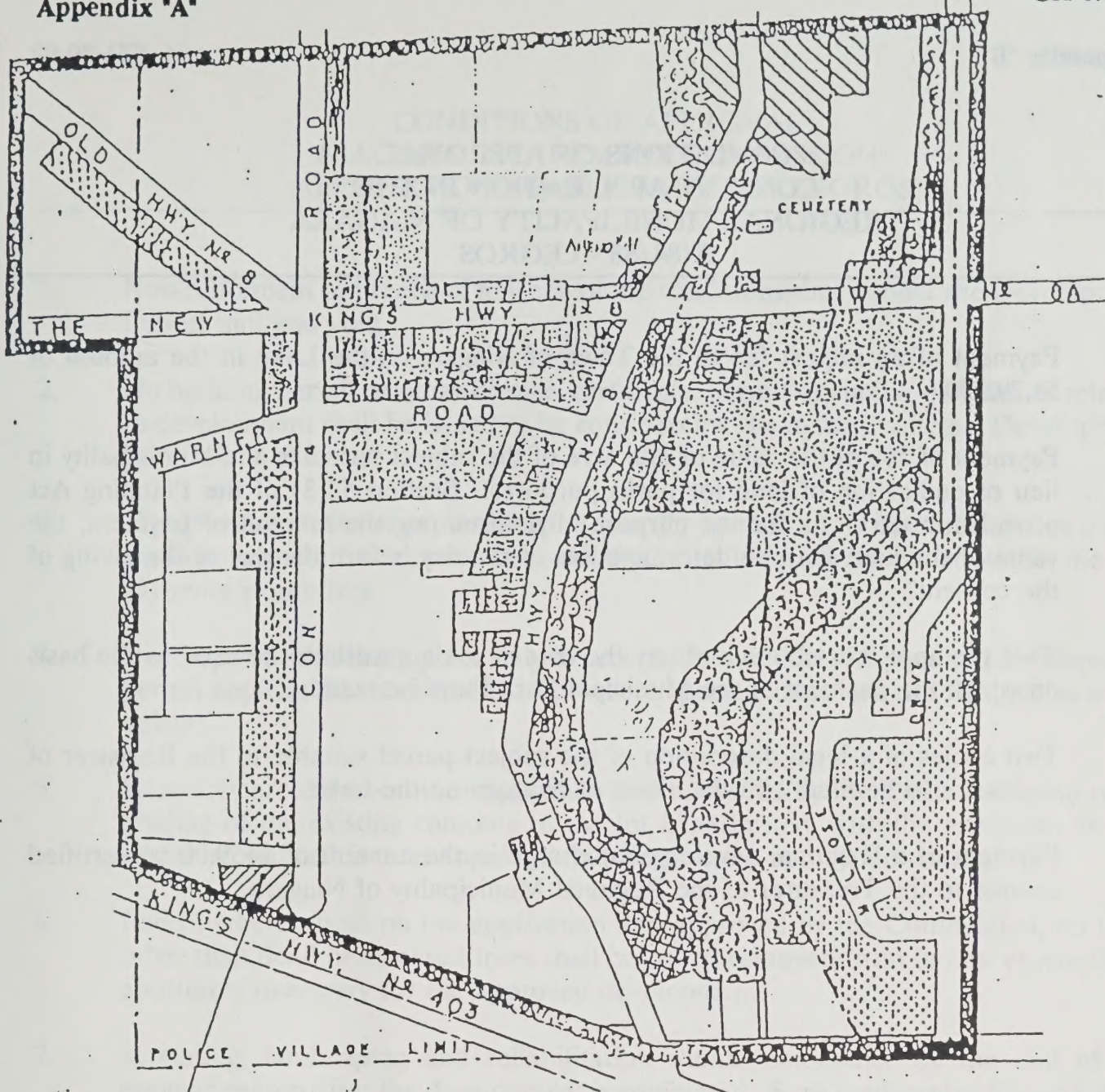
YEAR

1988

L.H.

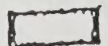
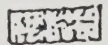
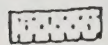
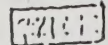
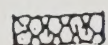
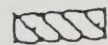
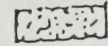
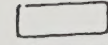
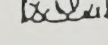
27354

FILE 88-63



Subject Site To Be
Redesignated From
Rural To Suburban
Residential

LEGEND

-  URBAN COMMUNITY BOUNDARY
-  URBAN RESIDENTIAL
-  SUBURBAN RESIDENTIAL
-  RURAL RESIDENTIAL
-  COMMERCIAL
-  INDUSTRIAL
-  INSTITUTIONAL OR RECREATIONAL
-  RURAL
-  OPEN SPACE

Schedule 'A' to Official
Plan Amendment
No.26-OP-3118A04 to the
Town of Niagara-on-the-Lake
Official Plan.

CONDITIONS OF APPROVAL
CONSENT APPLICATION IN THE
REGIONAL MUNICIPALITY OF NIAGARA
B184/88 - LEGROS

1. Payment of an impost fee to the Town of Niagara-on-the Lake in the amount of \$1,795.00.
2. Payment of 5% of the value of one acre of the subject parcel to the Municipality in lieu of dedication of land for parks purposes. Section 52(3) of the Planning Act provides in part: "... for the purpose of determining the amount of payment, the value of the land shall be determined as of the day before the day of the giving of the consent".
3. That the applicant obtain and pay the cost of the appraisal to be used as the basis on which the payment of the Municipal Park Fund be made.
4. Two copies of a legal description of the subject parcel suitable to the Registrar of deeds are to be filed with the Town of Niagara-on-the-Lake.
5. Payment of a Regional development charge in the amount of \$459.00 by certified cheque to the Treasurer of the Regional Municipality of Niagara.

CONDITIONS OF APPROVAL
NIAGARA ESCARPMENT COMMISSION
APPLICATION NO. N/R/89-90/265 - LEGROS

1. Non-fulfillment or breach of any one of the conditions shall render the Development Permit null and void.
2. No building permit or other licence, certificate, permit or similar permission relating to development shall be issued or be considered to be in force unless a Development Permit is in effect.
3. The Development Permit shall expire two (2) years from its date of issuance unless the development has commenced and a valid building permit issued within the two (2) years is in effect.
4. Development shall take place only in accordance with the site plan and development permit application submitted (except where special conditions are to apply as noted below).
5. Except where noted on the application and approved by the Commission, no other grading of the existing contours of the lot is permitted, with the exception of that which is required for the approved dwelling, access and septic system.
6. Except where noted on the application and approved by the Commission, no trees other than dead or diseased trees shall be cut or removed from the lot except those absolutely necessary for the approved development.
7. Screening, landscaping and rehabilitation should commence by the end of the growing season after the development is completed. Such landscaping allows for the individual taste of the owner. The Commission recommends that for major trees, species native to the area - e.g. cedar, maple, beech, ash, birch and pine - should be used rather than exotic species.
8. That prior to the issuance of a development permit by the Niagara Escarpment Commission, the lot be registered.
9. That prior to the issuance of a development permit by the Niagara Escarpment Commission, the applicant shall submit for the Niagara Escarpment staff approval final building and siting plans.
10. That the minimum setback of 45 ft. be maintained for the dwelling unit adjacent to the lot line adjacent to the 405 Highway.

11. That prior to the issuance of a building permit by the Town of Niagara-on-the-Lake, the applicant provide a lot grading plan to the satisfaction of the Town's Works Superintendent.
12. That prior to commencement of construction, the applicant shall secure all necessary approvals from the Ministry of Transportation, Regional Niagara Public Works, the Regional Niagara Health Unit and the Town of Niagara-on-the-Lake for construction of the dwelling, septic system and access.

CA20NCH 91C09

Ontario. Consolidated Hearings Act, 1981.

CH-89-09

DECISION AND REASONS FOR DECISION IN THE MATT
APPEALS BOTH BY LEONARD AND RUTH LEGROS 199

**RESOURCE CENTRE
INST. FOR ENVIRON'L. STUDIES
UNIVERSITY OF TORONTO**



